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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 August 2008*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

This communication is in response to the amendment filed on 08/15/2008 for the

application No. 10/710,413, Claims 23-28 were withdrawn because Applicant elected

and affirmed claims 1-22 as a result of a restriction requirement. Claims 1-22 are

currently pending and have been examined. Claims 1-22 have been rejected.

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the
> conditions and requirements of this title.

2.   Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

As to claims 1, and 6, they are rejected under 35 U.S.C. 101 because the claimed

invention is directed to nonstatutory subject matter. Based on Supreme Court

precedent, a method/process claim must (1) be tied to another statutory class of

invention (such as a particular apparatus) (see at least Diamond v. Diehr, 450 U.S. 175,

184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409

U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transform

underlying subject matter (such as an article or materials) to a different state or thing

(see at least Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim

that fails to meet one of the above requirements is not in compliance with the statutory

requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims **1 and 6**

fail to meet the above requirements because the claims fail to tie in another statutory

class of invention.

   As to claims 2-5 and 7-12, they depend from claims **1, and 6** and do not cure the

deficiencies set forth above. Therefore, claim 2-5 and 7-12 are also rejected for failing

to tie in another statutory class of invention.

Claim Rejections - 35 USC § 112

3.   Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. The word "may" renders the claim indefinite because it

is unclear whether the limitations following the word are part of the claimed invention.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claim1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

Patent 6,848,219 Standard, in view of US patent 5,524,195 Clanton, and further in view of

US Patent 5,619,247 Russo.

   As to claim 1, Standard discloses a method of promoting and playing a motion

picture at a theater (**Standard discloses an adaptable theater and multiplex that**

comprises a projection screen and projection room, Abstract. The theater can be networked to a digital video distribution system, wherein videos are transmitted digitally to the theater and projected using a digital video projection system, Col. 2:34-45).

Standard does not disclose promoting the motion picture in a manner that communicates to a prospective patron that: the motion picture is not scheduled to begin at the theater at any particular time;

the prospective patron may visit the theater when convenient for the prospective patron;

and the motion picture will begin shortly after the prospective patron arrives at the theater;

and begin playing the motion picture within no more than a pre-determined time period after a visiting patron arrives at the theater.

However, Clanton discloses promoting a motion picture in a manner that communicates to a prospective patron that:

the motion picture is not scheduled to begin at the theater at any particular time **(Clanton discloses that his system provides a graphical user interface for selecting and displaying videos on demand coupled to a communication medium for receiving digitalized movies. Since his system provides video on demand (VOD) capabilities, it does not schedule to begin at the theater in any particular time. Additionally, Clanton discloses that his system uses for promotion and**

advertisement a poster wall that the user may navigate and a movie preview over the selection of the poster, Fig. 5, Col. 3:60-61, Col. 4:1-4, Fig. 8);

the prospective patron may visit the theater when convenient for the prospective patron (**Col. 1:42-46**);

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Clanton</u>'s teaching into the system of <u>Standard.</u> One would have been motivated to use video on demand (VOD) capabilities in a theater networked to a digital video distribution system in order to offer flexible schedule to the patron or customer.

Further, <u>Standard</u> does not disclose a motion picture that begins shortly after the prospective patron arrives at the theater;

and begin playing the motion picture within no more than a pre-determined time period after a visiting patron arrives at the theater.

However, <u>Russo</u> teaches a motion picture that begins shortly after the prospective patron is ready for the movie, then the motion picture begins playing within no more than a pre-determined time period (**Russo discloses a method pay-per-play, that using near-video-on-demand capability, allows broadcast the same program in several channels simultaneously, with an offset in time by multiples of 10 or 15 minutes, Col. 1:24-34, Col. 2:66-67, Col. 3:1-11. Further, Russo discloses that the prospective patron is ready for the movie because the patron demands the video (VOD). Then Russo's system begins to play it within no more than the offset time interval pre-determined previously**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Russo</u> teaching into the system of <u>Standard.</u> One would have been motivated to begin shortly after the first patron arrives in order to generate satisfaction in the patron and credibility in the system.

As to claim 2, <u>Standard</u> and <u>Clanton</u> disclose a method as in claim 1 above, but Standard does not disclose promoting, the motion picture, in a manner that communicates to the prospective patron that the prospective patron must arrive at the theater within a time frame

However, <u>Russo</u> discloses promoting, the motion picture, in a manner that also communicates to the prospective patron that the prospective patron must arrive at the theater within a time frame (**<u>In Russo's system the patron demands a video using VOD technology (per the Examiner's interpretation it is similar to a patron that arrives to the theater). Further, Russo's system comprises video pay-per-play using near-video-on-demand capability which provides a patron flexibility in a convenience way. The broadcast technique used allows a single movie to be transmitted in different channels with an offset of time with multiples of 10 or 15 minutes. The VOD capability gives to the patron a plurality of frame of times when a movie is available in a schedule, Col. 1:25-34, Col. 2:66-67, and Col. 3:1-11</u>**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Russo</u>'s teaching into the system of <u>Standard</u> in order to provide flexible schedule for a prospective patron and minimum waiting period to start the movie.

As to claim 3, <u>Standard</u> and <u>Clanton</u> disclose a method as in claim 2 above, but Standard does not disclose the time frame is defined by two stated times

However, <u>Russo</u> discloses the time frame is defined by two stated times (**VOD capability gives to the patron a plurality of frame of times when a movie is available in a schedule, Col. 1:25-34, Col. 2:66-67, Col. 3:1-11**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Russo</u>'s teaching into the system of <u>Standard</u> in order to provide flexible schedule for a prospective patron and to communicate the business hours of operation.

As to claim 4, <u>Standard</u> and <u>Clanton</u> disclose a method as in claim 1 above, but Standard does not disclose the promoting is in a manner that also communicates to the prospective patron that the motion picture will begin within no more than a stated time period after the prospective patron arrives at the theater.

However, <u>Russo</u> discloses the promoting is in a manner that also communicates to the prospective patron that the motion picture will begin within no more than a stated time period after the prospective patron arrives at the theater (**In Russo's system the patron demands a video using VOD technology (per the Examiner's interpretation it is similar to a patron that arrives to the theater). Further, Russo discloses that video pay-per-play using near-video-on-demand capability provides a patron with convenience , since the broadcast technique used allows a single movie to be transmitted in different channels, starting it by an offset in time with multiples of 10 or 15 minutes. The VOD capability gives to the patron a plurality of frame of**

times when a movie is available in a schedule, Col. 1:25-34, Col. 2:66-67, and Col. 3:1-11).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Russo</u>'s teaching into the system of <u>Standard</u> in order to provide not only flexibility but also trustworthiness in the system.

6.   Claims 13- 14 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,848,219 <u>Standard,</u> in view of US patent 7,024,680 <u>Fransman.</u>

As to claim 13, <u>Standard</u> discloses a system for playing a motion picture at a theater to a plurality of patrons (**Abstract**) comprising:

a projector for projecting the motion picture in the theater (**Abstract**);

but Standard does not teach a processing system configured to cause the projector to begin projecting the motion picture a pre-determined time period after the first of the plurality of patrons arrives at the theater.

However, <u>Fransman</u> discloses a processing system configured to cause the projector to begin projecting the motion picture a pre-determined time period after the first of the plurality of patrons arrives at the theater (**Standard teaches that the theater can be networked to a digital video distribution system (Col 2:34-45). Next, Fransman discloses that his system comprises a "master scheduler system" for digital video distribution. This system provides in an automatic way operation support to functions such as, content management, (Abstract)).** configured to cause the projector to begin projecting the motion picture (**Fransman's system**

discloses that it begins projecting the motion picture when a movie (video data)

is sent from a server to head-end (screen) , "...sending video from a video server

which provides video data to a head-end distribution system for delivery to and

subsequent viewing by a user...", Col. 2:20-28. Further, Fransman's system

comprises an assets management system that manages the video assets ,

"...The asset management system 66 also tracks the status of the video data; for

example, when and how often a video asset is retrieved...", Col. 13:14-24) a pre-

determined time period after the first of the plurality of patrons arrives at the theater

(Fransman discloses that in his system the user demands a movie (the first of the

plurality of patrons arrives at the theater). Further, his system uses a broadcast

technique known as staggered start that allows to start a movie in separate

multiple channels. The start of each copy of the movie is offset by a staggered

time interval, "...for example, the staggering time may be about fifteen minutes.

Without staggering, a user has to wait for a movie to finish, which may be over

two hours...", Col. 1:19-38).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate Fransman's teaching into the system of Standard.

One would have been motivated to use the near video on demand capabilities on a

networked digital video distribution theater in order to provide schedule flexibility to a

prospective patron and efficient utilization of the technical resources.

As per claim 14, Standard discloses a method as in claim 13 above, but

Standard does not teach a processing system wherein the processing system is further

configured to cause the projector to begin playing the motion picture when a pre-determined level of patrons at the theater is reached, if earlier than the pre-determined time period after the first of the plurality of patrons arrives at the theater.

However, <u>Fransman</u> discloses a processing system wherein the processing system is further configured to cause the projector to begin playing the motion picture when a pre-determined level of patrons at the theater is reached, if earlier than the pre-determined time period after the first of the plurality of patrons arrives at the theater (**<u>Standard teaches the theater can be networked to a digital video distribution system (Col 2:34-45). Further, Fransman discloses that his system is couple with a video server content manager that allows in an automatic way to control the loading and unloading of content (Col. 15:35-43), controlling the total capacity and the remaining capacity for providing content (Col. 16:16-24)</u>**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate Fransman's teaching into the system of Standard in order to provide schedule flexibility to a patron.

As to claim 19, <u>Standard</u> discloses a method as in claim 14 above, and further <u>Standard</u> teaches the method of playing a motion picture wherein:

the theater is in a complex of theaters (**<u>Abstract, Col 8:44-54</u>**);

but <u>Standard</u> does not teach that the pre-determined level is a function of the number of theaters in the complex.

However, <u>Fransman</u> indirectly discloses that the pre-determined level is a function of the number of theaters in the complex (**<u>Further, Fransman discloses that his system</u>**

is couple with a video server content manager that in an automatic way controls

the loading and unloading of content (Col. 15:35-43), controlling the total capacity

and the remaining capacity for providing content (Col. 16:16-24). Further, his

system offers NVOD which comprises a broadcast technique that allows

broadcast a single movie in different channels. Per the Examiner's interpretation

each channel is considerer like a projection in a different theater).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Fransman</u>'s teaching into the system of <u>Standard </u>in

order to determine physical capacity (level) of each theater before to provide a motion

video .

As to claim 20, <u>Standard </u>discloses a method as in claim 14 above, further

<u>Standard </u>teaches the method of playing a motion picture wherein:

the theater is in a complex of theaters (**Abstract, Col 8:44-54**);

but Standard does not teach that the pre-determined time period is a function of

the number of theaters in the complex.

However, <u>Fransman</u> discloses a system that has automatic content management

(**Clanton teaches the function of starting time, and time period, the week, Col. 2:**

1-7:59-67. Furthermore, Fransman discloses that his system is couple with a

video server content manager that in an automatic way controls the loading and

unloading of content (Col. 15:35-43), controlling the total capacity and the

remaining capacity for providing content (Col. 16:16-24)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include time period as taught by Fransman in the system of Standard, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.[1]

As to claim 21, Standard discloses a method as in claim 13 above, but Standard does not teach an input system configured to receive and communicate information indicative of the arrival of at least the first of the plurality of patrons and wherein the processing system is further configured to receive the information from the input system and to use the information in determining when to cause the projector to begin projecting the motion picture.

However, Fransman discloses an input system configured to receive and communicate information indicative of the arrival of at least the first of the plurality of patrons and wherein the processing system is further configured to receive the information from the input system and to use the information in determining when to cause the projector to begin projecting the motion picture (**Standard teaches the theater can be networked to a digital video distribution system (Col 2:34-45). Further, Fransman's system**

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[1] Ex parte Smith, 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007); Claims in application for patent on pocket insert for book are obvious in view of combination of two prior art patents, since claims are combinations that merely unite old elements with no change in their respective functions, and which yield predictable results, since neither applicant's specification nor her arguments present any evidence that modifications necessary to effect combinations are uniquely challenging or difficult for person of ordinary skill in art, and since claimed improvement is no more than simple substitution of one known element for another, or mere application of known technique to piece of prior art ready for improvement. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007);

can generate automated alerts when is with full capacity or low capacity (Col. 24:1-9). Per the Examiner's interpretation when an user demands a video (NVOD) it is like the arrival of at least the first of the plurality of patrons at the theater. Furthermore, Fransman discloses that his system is couple with a video server content manager that allows in an automatic way to monitor and control the loading and unloading of content (Col. 15:35-43), controlling the total capacity and the remaining capacity for providing content (Col. 16:16-24),

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate Fransman's teaching into the system of Standard in order to have input to the system that allows using resources to start the movie projection.

As to claim 22, Standard discloses a method as in claim 13 above, but Standard does not teach an input system that comprising a timing system configured to determine when the predetermined time period has elapsed.

However, Fransman discloses an input system that comprising a timing system configured to determine when the predetermined time period has elapsed (**Fransman discloses that NVOD technology provides a staggering time that automatically allows video signal starting at a different time(Col. 1:29-38, Col. 2:9-19)**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate Fransman's teaching into the system of Standard in order to provide a movie in a short convenient time after the patron arrives to the theater. It creates a sense of trustworthiness in the system.

7.   Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

US Patent 6,848,219 <u>Standard,</u> in view of US patent 7,024,680 <u>Fransman </u>and further in

view of US patent 5,524,195 <u>Clanton.</u>

   As to claim 15, <u>Standard</u> discloses a method as in claim 14 above, but

<u>Standard</u> does not teach the method of playing a motion picture wherein the pre-

determined level is a function of the time of day.

   However, <u>Fransman</u> and <u>Clanton</u> teach the method of playing a motion picture

wherein the pre-determined level is a function of the time of day (**<u>Clanton teaches</u> <u>the</u>**

<u>downloading of movies for viewing is by starting time and date, Col. 2:1-7.</u>

<u>Further, Fransman discloses that his system is couple with a video server</u>

<u>content manager that in an automatic way controls the loading and unloading of</u>

<u>content (Col. 15:35-43), controlling the total capacity and the remaining capacity</u>

<u>for providing content (Col. 16:16-24). Furthermore, Fransman teaches "...Each</u>

<u>line-up element 130 (video data or movie) includes a vendor name field, a version</u>

<u>number field, a start date /time, an end date /time...", Col. 6:59-67, Col. 7:1-3)</u>.

   Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Fransman and Clanton</u>'s teaching into the system of

<u>Standard</u> in order to assign a specific capacity depending on the day of the scheduled

movie.

   As to claim 16, <u>Standard and Fransman</u> disclose a method as in claim 14

above, but Standard does not teach a method of playing a motion picture wherein the

pre-determined time period is a function of the time of day.

However, Clanton teaches the method of playing a motion picture wherein the pre-determined time period is a function of the time of day (**the downloading of movies for viewing is by starting time and date, Col. 2:1-7**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate Clanton's teaching into the system of Standard in order to assign a specific capacity depending on the time of the scheduled movie.

As to claim 17, Standard discloses a method as in claim 14 above, but Standard does not teach the method of playing a motion picture wherein the pre-determined level is a function of the popularity of the motion picture.

However, Clanton and Fransman teach the method of playing a motion picture wherein the pre-determined level is a function of the popularity of the motion picture (**Clanton teaches the function of "top 10 listing of the week", Col. 2: 59-67. Further, Fransman discloses that his system is couple with a video server content manager that in an automatic way controls the loading and unloading of content (Col. 15:35-43), controlling the total capacity and the remaining capacity for providing content (Col. 16:16-24).**

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate Clanton and Fransman's teaching into the system of Standard in order to assign level of capacity depending on the popularity of the motion picture.

As to claim 18, <u>Standard</u> and <u>Fransman</u> disclose a method as in claim 14

above, but <u>Standard</u> does not teach the method of playing a motion picture wherein the

pre-determined time period is a function of the popularity of the motion picture.

However, <u>Clanton</u> teaches the method of playing a motion picture wherein the

pre-determined time period is a function of the popularity of the motion picture

(Clanton's system combines the movie time period with the popularity rating of

the movie, Col. 2:1-7, Col. 2: 59-67 and Col. 8:48-61, Fig. 5).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Clanton</u>'s teaching into the system of <u>Standard</u> in

order to assign a predetermine schedule depending on the popularity of the motion

picture.

8.   Claim 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

Patent 6,848,219 <u>Standard</u>, in view of US patent 5,524,195 <u>Clanton</u>, in view of US Patent

5,619,247 <u>Russo</u> and further in view of US Patent 7,024,681 <u>Fransman</u>.

As to claims 5 and 6, Standard, <u>Clanton</u> and <u>Russo</u> disclose a method as in

claim 1 above and 6, but <u>Standard</u> does not disclose that the motion picture begins to

play at the earlier of the following:

the pre-determined time period after the visiting patron arrives at the theater.

However, <u>Russo</u> discloses that the motion picture begins to play at the earlier of

the following:

the pre-determined time period after the visiting patron arrives at the theater

(**Russo discloses that the prospective patron is ready for the movie because the**

patron demands the video (VOD). Next, Russo's system begins to play it within

no more than the offset time interval pre-determined previously. Further, Russo

discloses that video pay-per-play using near-video-on-demand capability

provides a patron with flexibility in a convenient way. The broadcast technique

used allows a single movie to be transmitted in different channels with the

beginning of each movie starting with an offset of time. The VOD capability gives

to the patron a plurality of frame of times when a movie is available in a schedule,

Col. 1:25-34, Col. 2:66-67, and Col. 3:1-11);

Furthermore, <u>Standard</u> does not disclose that the motion picture begins to play

when a pre-determined level of visiting patrons at the theater has been reached.

However, <u>Fransman</u> teaches a motion picture that begins to play when a pre-

determined level of video capacity has been reached (**Fransman discloses that his**

system comprises a "master scheduler system" for digital video distribution. This

system provides in an automatic way operation support to functions such as,

content management, (Abstract). The master scheduler system receives,

processes, and disseminates near-video-on-demand (NVOD) schedule-related

information for an end-to-end NVOD service (each theater of a plurality of

theaters) (Abstract). Further, Fransman discloses his system has an assets

management module which provides functions such as, "…Data management

alerts may be generated when the master scheduler application is not

operational, or when the database 82 reaches a certain low level of capacity

which may indicate insufficient resources to meet broadcast schedules, such that

fewer assets are available to subscribers 36 using the NVOD system 10, which

may cause a loss of potential revenue...", Col. 24:1-9. The examiner notes that the

"asset management" tracks how often a video asset is retrieved (per the

Examiner's interpretation it is similar to number of prospective patrons ready for

the movie) and assign resources depending on the level of capacity that has

been reached (per the Examiner's interpretation it is similar to minimum number

of patrons to start the movie versus maximum number of patrons that fit in the

theater), this is when an user demands a video the capacity to provide resources

is checked, if there is enough available capacity, the demand is fulfilled).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate Russo and Fransman's teaching into the system of

Standard. One would have been motivated to control capacity versus resources

available in order to satisfy demand (start to play motion picture) depending on the

resources available (if there is at least one patron or if the theater is not full already).

As to claim 7, Standard , Clanton and Russo disclose a method as in claim 6

above, but Standard does not teach the method of playing a motion picture wherein

the pre-determined level is a function of the time of day.

However, Fransman teaches the method of playing a motion picture wherein the

pre-determined level is a function of the time of day (**Clanton teaches the**

downloading of movies for viewing is by starting time and date, Col. 2:1-7.

Further, Fransman discloses that his system is couple with a video server content manager that in an automatic way controls the loading and unloading of content (Col. 15:35-43), controlling the total capacity and the remaining capacity for providing content (Col. 16:16-24). Furthermore, Fransman teaches "…Each line-up element 130 (video data or movie) includes a vendor name field, a version number field, a start date /time, an end date /time…", Col. 6:59-67, Col. 7:1-3).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Fransman</u>'s teaching into the system of <u>Standard</u> in order to assign a specific capacity depending on the day of the scheduled movie.

As per claim 8, <u>Standard</u> , <u>Clanton</u> and <u>Russo</u> disclose a method as in claim 6 above, but Standard does not teach a method of playing a motion picture wherein the pre-determined time period is a function of the time of day.

However, <u>Clanton</u> teaches the method of playing a motion picture wherein the pre-determined time period is a function of the time of day (**the downloading of movies for viewing is by starting time and date, Col. 2:1-7**).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate <u>Clanton</u>'s teaching into the system of <u>Standard</u> in order to assign a specific capacity depending on the time of the scheduled movie.

As to claim 9, <u>Standard</u> , <u>Clanton</u> and <u>Russo</u> disclose a method as in claim 6 above, but <u>Standard</u> does not teach the method of playing a motion picture wherein the pre-determined level is a function of the popularity of the motion picture.

However, <u>Clanton</u> and <u>Fransman</u> teaches the method of playing a motion picture

wherein the pre-determined level is a function of the popularity of the motion picture

(<u>Clanton teaches the function of</u> "<u>top 10 listing of the week</u>", <u>Col. 2: 59-67.</u>

<u>Further, Fransman discloses that his system is couple with a video server</u>

<u>content manager that in an automatic way controls the loading and unloading of</u>

<u>content (Col. 15:35-43), controlling the total capacity and the remaining capacity</u>

<u>for providing content (Col. 16:16-24).</u>

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Clanton</u> and <u>Fransman</u>'s teaching into the system of

<u>Standard</u> in order to assign level of capacity depending on the popularity of the motion

picture.

As to claim 10, <u>Standard</u> , <u>Clanton</u> and <u>Russo</u> disclose a method as in claim 6

above, but <u>Standard</u> does not teach the method of playing a motion picture wherein the

pre-determined time period is a function of the popularity of the motion picture.

However, <u>Clanton</u> teaches the method of playing a motion picture wherein the

pre-determined time period is a function of the popularity of the motion picture

(<u>Clanton's system combines the movie time period with the popularity rating of</u>

<u>the movie, Col. 2:1-7, Col. 2: 59-67 and Col. 8:48-61, Fig. 5</u>).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Clanton</u>'s teaching into the system of <u>Standard</u> in

order to assign a predetermine schedule depending on the popularity of the motion

picture.

As to claim 11, <u>Standard</u> , <u>Clanton</u> and <u>Russo</u> disclose a method as in claim 6

above, and further <u>Standard</u> teaches the method of playing a motion picture wherein:

the theater is in a complex of theaters (**Abstract, Col 8:44-54**);

but <u>Standard</u> does not teach that the pre-determined level is a function of the

number of theaters in the complex.

However, <u>Fransman</u> indirectly discloses that the pre-determined level is a function of

the number of theaters in the complex (**Further, Fransman discloses that his system**

is couple with a video server content manager that in an automatic way controls

the loading and unloading of content (Col. 15:35-43), controlling the total capacity

and the remaining capacity for providing content (Col. 16:16-24). Further, his

system offers NVOD which comprises a broadcast technique that allows

broadcast a single movie in different channels. Per the Examiner's interpretation

each channel is considerer like a projection in a different theater).

Therefore, it would have been obvious to one of ordinary skill in the art, at the

time of the invention, to incorporate <u>Fransman</u>'s teaching into the system of <u>Standard</u> in

order to determine physical capacity (level) of each theater before to provide a motion

video .

As to claim 12, <u>Standard</u> , <u>Clanton</u> and <u>Russo</u> disclose a method as in claim 6

above, further <u>Standard</u> teaches the method of playing a motion picture wherein:

the theater is in a complex of theaters (**Abstract, Col 8:44-54**);

but Standard does not teach that the pre-determined time period is a function of

the number of theaters in the complex.

However, <u>Fransman</u> discloses a system that has automatic content management **(Clanton teaches the function of starting time, and time period, the week, Col. 2: 1-7:59-67. Furthermore, Fransman discloses that his system is couple with a video server content manager that in an automatic way controls the loading and unloading of content (Col. 15:35-43), controlling the total capacity and the remaining capacity for providing content (Col. 16:16-24))**.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include time period as taught by <u>Fransman</u> in the system of <u>Standard</u>, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.[2]

Response to Arguments

9.   The objection to the claims 1-28 have been withdrawn because the Applicant have amended the claims.

10.   The rejection to the claims 1-5 under 35 U.S.C 112 second paragraph has been maintained. The word "may" in claim 1 renders the claim indefinite.

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[2] Ex parte Smith, 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007); Claims in application for patent on pocket insert for book are obvious in view of combination of two prior art patents, since claims are combinations that merely unite old elements with no change in their respective functions, and which yield predictable results, since neither applicant's specification nor her arguments present any evidence that modifications necessary to effect combinations are uniquely challenging or difficult for person of ordinary skill in art, and since claimed improvement is no more than simple substitution of one known element for another, or mere application of known technique to piece of prior art ready for improvement. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007);

11.   Applicant's arguments filed 08/15/2008 regarding the rejection of amended

claims 1-22 under 35 U.S.C 102(b) have been fully considered but they are not

persuasive.

12.   Claims 13 and 14: The Applicant argue that the limitation "...The processing

system must be configured to cause the projector to begin projecting the motion picture a

pre-determined time period after the first of the plurality of patrons arrives at the

theater...", is not obvious in view of the stated combination of Standard and Fransman

and that a prima facie showing of such obviousness has not in any event been

established.

The Examiner respectfully disagrees with the Applicant because: <u>First of all</u>,

<u>Standard</u> teaches that the theater can be networked to a digital video distribution

system (Col 2:34-45). Next, <u>Fransman</u> discloses that his system comprises a "master

scheduler system" for digital video distribution. This system provides in an automatic

way operation support to functions such as, content management, (Abstract)).

Furthermore, Fransman's system discloses that it begins projecting the motion picture

when a movie (video data) is sent from a server to head-end (screen) , "...sending

video from a video server which provides video data to a head-end distribution system

for delivery to and subsequent viewing by a user...", Col. 2:20-28. Further, Fransman's

system comprises an assets management system that manages the video assets ,

"...The asset management system 66 also tracks the status of the video data; for

example, when and how often a video asset is retrieved...", Col. 13:14-24). In addition,

Fransman discloses that in his system the user demands a movie (the Examiner

interprets like the first of the plurality of patrons arrives at the theater). Further, his

system uses a broadcast technique known as staggered start that allows to start a

movie in separate multiple channels. The start of each copy of the movie is offset by a

staggered time interval, "…for example, the staggering time may be about fifteen

minutes. Without staggering, a user has to wait for a movie to finish, which may be over

two hours…", Col. 1:19-38. <u>Secondly,</u> the Examiner believes to be an admission by

the Applicant of the prior art disclosure when he states "….the fact that motion pictures

were known to be displayed in theaters using networked digital video plainly does

constitute a disclosure or a suggestion of this feature…" on page 8 of the remarks .

<u>Finally,</u> one cannot show nonobviousness by attacking references individually where the

rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413,

208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed.

Cir. 1986).

13.   Claim 15: The Applicant argue that "Russo... broadcasts the same program in

several channels.., offset by multiples of 10 or 15 minutes." is not at all the same as a

processing system that is configured to cause the projector to begin projecting the motion

picture "a pre-determined time period after the first of the plurality of patrons arrives at the

theater". The Examiner respectfully disagrees with the Applicant because: **In Russo's**

system the patron demands a video using VOD technology (per the Examiner's

interpretation it is similar to a patron that arrives to the theater). Further, Russo's

system comprises video pay-per-play using near-video-on-demand capability which

provides a patron flexibility in a convenience way. The broadcast technique used

allows a single movie to be transmitted in different channels with an offset of time

with multiples of 10 or 15 minutes. The VOD capability gives to the patron a

plurality of frame of times when a movie is available in a schedule, Col. 1:25-34,

Col. 2:66-67, and Col. 3:1-11.

14.   Claims 16-22 and 1-12:   The Applicant argue that the claims are not obvious in
view of the combination of applied references and that a prima facie showing of such
obviousness has not in any event been established. The Examiner respectfully disagrees
with the Applicant because first of all, the different features are present in the combination
of the Standard, Clanton, Russo and Fransman's references used on the rejection of
these claims (see the rejection of claims 16-22 and 1-12). Secondly, the rejections of
claims 16-22 and 1-12 are based on combined references. One cannot show
nonobviousness by attacking references individually where the rejections are based on
combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA
1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. VICTORIA VANDERHORST whose telephone number is (571)270-3604. The examiner can normally be reached on Monday through Friday from 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571 272 6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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